MOTION TO CONSOLIDATE.

May it please the Court:

This case arises out of the same fact situation and involves the same legal questions as *The People of the State of Illinois, ex rel. Reconstruction Finance Corporation, et al.* v. *Board of Education of the City of Chicago, et al.*, this day filed, and this petitioner moves that this case be consolidated with that case for hearing and decision.

Respectfully submitted,

Floyd E. Thompson,
Albert E. Jenner, Jr.,
Attorneys for Petitioner,
11 South La Salle Street,
Chicago, Illinois.

OCT 28 1944
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 331

F. J. LEWIS,

Petitioner,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, ET AL., AND FRANK C. LEVITON,

Respondents.

PETITION OF F. J. LEWIS FOR RECONSIDERATION OF HIS PETITION FOR WRIT OF CERTIORARI.

FLOYD E. THOMPSON,
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11 South La Salle Street,
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Attorneys for Petitioner.

THE BUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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PETITION OF F. J. LEWIS FOR RECONSIDERATION OF HIS PETITION FOR WRIT OF CERTIORARI.

To The Honorable The Supreme Court of the United States:

F. J. Lewis, a judgment creditor of the Board of Education of the City of Chicago and an intervening defendant in an injunction proceeding commenced in the Circuit Court of Cook County, Illinois, by taxpayers against said Board of Education, respectfully prays that this Honorable Court reconsider his petition for writ of certiorari, that it set aside its order of October 9, 1944, denying said petition, and that it award the writ of certiorari as prayed in said petition.

We respectfully submit that

(1) rights and interests under the Constitution of the United States were duly claimed and duly asserted by the petitioner in the state courts, as set forth in the petition at pages 6-9;

(2) the federal constitutional questions presented and the constitutional rights claimed were substantial, as presented in the petition at pages 9-15;

(3) the claims of rights and interests under the federal Constitution urged by petitioner were not decided or given due recognition by the Supreme Court of Illinois, as appears from an examination of its opinion (R. 237-244) and of the petition for rehearing (R. 249-281); and

(4) the non-federal grounds upon which the Supreme Court of Illinois based its decision are untenable and unsubstantial and are not independent of the claims of petitioner under the federal Constitution so that the rights and interests of petitioner can be adjudicated without a decision of the federal constitutional questions.

These are the considerations which this Honorable Court has often stated impel it to exercise its discretion to award its writ to bring before it for review the judgment of a state court. Neither respondent filed an answer to the petition for writ of certiorari.

We respectfully suggest that whether the non-federal grounds upon which the Supreme Court of Illinois based its decision are tenable and substantial and whether the rights and interests of petitioner can be adjudicated without a decision of the federal questions asserted by petitioner, are in themselves substantial federal questions which should move this Court to exercise its judicial discretion to bring the case up for review. *Lawrence* v. *State Tax Commission*, 286 U. S. 276, 282; *Ward* v. *Love County*, 253 U. S. 17, 22; *Kansas City Southern Ry.* v. *Albers Commis-*

sion Co., 223 U. S. 573, 591-594; *C. B. & Q. Ry.* v. *Drainage Comrs.*, 200 U. S. 561, 580; *Rogers* v. *Alabama*, 192 U. S. 226, 230.

On the face of the record the decision of the Supreme Court of Illinois was in favor of the taxpayers of the Board of Education and against the Board, but it was in fact in favor of both because their interests are identical. The petition for rehearing (R. 249-281) exposes the startling doctrines announced by the Supreme Court of Illinois in its opinion and demonstrates how arbitrarily that Court brushed aside the real questions in the case and denied to petitioner and those in his position their day in court on the real issues.

The issues in this case are substantially like the issues in No. 330, *People ex rel. Reconstruction Finance Corp. et al.* v. *Board of Education of the City of Chicago, et al.*, with which petitioner has moved that this case be consolidated, and he respectfully refers to the petition for reconsideration in that case for additional support for this petition.

Respectfully submitted,

FLOYD E. THOMPSON,
ALBERT E. JENNER, JR.,
Attorneys for Petitioner.

CERTIFICATE.

We certify that the foregoing motion for reconsideration of Petition for Writ of Certiorari is presented in good faith and not for delay.